DOCUMENT RESUME

ED 250 781 EA 017 286

AUTHOR Shulman, Myra
TITLE The Collective Bargaining Process: From Certification to Contract Ratification.
PUB DATE 84
NOTE 13p.
PUB TYPE Reports - Descriptive (141)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Collective Bargaining; *Contracts; English (Second Language); Higher Education; Private Colleges; Seniority; *Teacher Salaries; *Unions; Wages; *Work Environment
IDENTIFIERS American University DC; National Labor Relations Board

ABSTRACT

This report outlines the process involved in establishing a faculty union at the English Language Institute at the American University in Washington, D.C. The English Language Institute Faculty Association (ELIFA) is one of the few units to be certified at a private university since the 1980 Yeshiva Supreme Court decision. During the beginning negotiation phase for the union, the university refused to recognize the union; at that point ELIFA filed a petition with the National Labor Relations Board and had a labor lawyer handle the case "pro bono." When ELIFA won the petition it held an election and the majority of the members supported ELIFA as their representative bargaining agent. The union used a collaborative bargaining process emphasizing interests rather than issues with the university and came up with a mutually satisfactory contract agreement. The contract was unanimously ratified by the members and has 20 articles. Major nonfinancial contract gains include grievance procedures, a union security clause, paid sick leave, and seniority rights. Major financial gains include a 13 percent wage increase for full time teachers, proportionate summer pay, and a 40-65 percent increase in the hourly pay rate. (MD)

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The Collective Bargaining Process: From Certification to Contract Ratification

1984

Myra Shulman
English Language Institute
American University
Washington, D.C.

EA 017 286

In 1970, private universities in the United States came under the jurisdiction of the National Labor Relations Board for the first time. Throughout the seventies, faculties at private universities were organizing, becoming certified, and engaging in collective bargaining. Then, on February 20, 1980, the Supreme Court issued the Yeshiva Decision, in which it ruled that the Faculty at Yeshiva University was managerial and, therefore, could not engage in collective bargaining. Under the National Labor Relations Act (NLRA), employees who are managerial and supervisory may not engage in collective bargaining.

The Yeshiva Decision had a great impact on collective bargaining in higher education. Many universities refused to bargain with faculty unions which were already certified. Other universities used the threat of Yeshiva to keep their faculties from organizing. The English Language Institute was one of the only units in a private university to become certifed for collective bargaining and to negotiate a contract after the Yeshiva Decision. How and why did that happen?

My presentation is divided into six sections: The historical background of the ELI, the certification process, the collective bargaining process, the components of a contract, the contract gains, and the aftermath.

The English Language Institute was founded in 1970. At that time, there were two adjunct faculty members and one tenured full-time faculty member. Throughout the seventies, the ELI expanded, necessitating the hiring of many more teachers, all of whom were part-time (adjunct faculty).

In 1976, the University awarded ten full-time contracts to the teachers, but these were staff contracts. In 1978, the University awarded five more full-time staff contracts, and in 1982 six more were awarded, bringing to twenty-one the number of full-time positions at the ELI. There were also nineteen part-time positions and three teaching assistantships.

Because the ELI had been growing so rapidly in those years, problems in regard to the conditions of employment had also been growing, and the discontent among the teachers was increasing. The problems that plagued the ELI are the same problems that ESL/EFL teachers have everywhere.

1. The salaries were very low, in fact, lower than the salaries of any other faculty at the University.

2. The working conditions were unclear. This was because the teachers were classified as full-time staff at the same time that they were classified as adjunct faculty. The University could apply the rules of the faculty to us at certain times and the rules of the staff at other times, and the University used this situation to its advantage.

3. The communication with the management in the hierarchy of the University was very poor. Our attempts to meet were generally unsuccessful.

4. The full-time and part-time teachers did exactly the same job and worked the same number of hours, about 17.5 per week. The full-time teachers were paid a nine-month salary and received benefits because they were on a staff contract. The part-time teachers were paid an hourly wage and got no benefits.

5. There was no paid sick leave, substitute policy, or job security.

For all these reasons, the teachers at the ELI decided to establish the Standing Committee in 1980. This was a committee of five teachers who were elected by the other teachers. The committee was to act as a liason with the management in the University. The Standing Committee worked hard, but it was not able to effect any changes in our working conditions. Therefore, on September 26, 1981, the teachers founded the English Language Institute Faculty Association, which I will refer to as ELIFA.

At that time, September 26, 1981, there were thirty-seven teachers at the ELI, thirty-six of whom joined the Union. The first action of the Executive Council of the Union was to take a survey to determine what the teachers felt the most serious problems were, what the goals of ELIFA should be, and what we should do to achieve those goals. The results of the survey revealed that there was a very strong interest in collective bargaining. We took a formal vote at our December meeting on the question: Should ELIFA remain an association or should it attempt to become certified for collective bargaining? The results of the vote were: two teachers voted that EILFA should remain an association, that is, attempt to work within the University structure; thirty-two teachers voted that ELIFA should attempt to become certified for collective bargaining.

That was a sign to move forward, so at our next meeting in January, authorization cards were handed out to determine the showing of interest. If a union wishes to file a petition at the National Labor Relations Board in order to ask for a representation election, it has to have a showing of interest from thirty per cent of the employees in the unit. Of our thirty-six teachers who had joined ELIFA, thirty-five signed these cards, which was ninety-seven per cent. Our next step was to write a letter to the highest officers in the University, asking for recognition of ELIFA as the bargaining agent for the ELI teachers.

The Union wrote two letters, first on January 20th and then on February 3rd, and the Provost responded that he would like to meet with the Union. At our meeting with him, we asked again to have an answer about recognition. Finally, on February 12th, we received an answer. The Provost wrote that the University would not recognized ELIFA for purposes of collective bargaining. Four days later on the 16th, union memberswent to the National Labor Relations Board and filed a petition, which is called an RC Petition, the Certification of Representative. It states that "... a substantial number of employees wish to be represented for purposes of collective bargaining by petitioner, and petitioner desires to be certifed as representative of the employees." The thirty-five authorization cards (ninety-seven per cent showing of interest) were handed over at that time.

Having received the petition, the NLRB notified the employer, and if the employer had agreed, we would have had a consent election, but American University didn't agree, as most universities don't these days. Therefore, a representation hearing was set up to investigate whether the members of our unit formed an appropriate unit in order to have a representation election. A representation hearing is a non-adversarial, investigatory proceeding before the NLRB. Testimony was given by six witnesses from the Union and one witness for the University, who was the Associate Director at that time.

The Union had immediately contacted a labor lawyer when the NLRB informed us of the hearing. The labor lawyer took the case "pro bono", which was very lucky because the Union didn't have a big treasury. The representation hearing began on March 12th and continued until April 20th. At the hearing, the University raised two issues: community of interest and Yeshiva. Community of interest means, according to the NLRA, that if you wish to have a representation election, the workers in the unit must have roughly the same wages, hours, and working conditions. The University said that in our unit, because we were a mixture of full-time and part-time teachers, we didn't have a community of interest. However, our full-time and part-time teachers did precisely the same work for the same number of hours and for roughly the same wages, so we felt that was not a valid argument. The second issue was the Yeshiva issue. The University claimed that we were all managerial, which was a surprise to us when in fact we couldn't even choose our own desks.

The hearing ended on April 20th, which was a period of six weeks, actually covering thirteen full days. Then the lawyers had a month in which to turn in their briefs. On May 21st, the Lawyers turned in briefs, and on July 9th, the Regional Director of the NLRB issued his decision. He ruled in favor of the Union, stating that the unit was appropriate and we could, therefore, have a

representation election, which he set up for August 5th. In the meanwhile, the University had not given up. It filed an appeal on July 22nd; on July 29th, one week later, our lawyer filed his response. The day before the election was to take place, the Regional Director issued his decision, and once again, he ruled in favor of the Union, denying the appeal of the University.

The election went ahead as scheduled on August 5th. It was a Board-supervised secret ballot election , held on the premises of the University. The results of the election were: One teacher voted against ELIFA to be the bargaining agent; twenty-eight teachers voted forELIFA to be the bargaining agent. This was actually 100% voter turn-out because there were four teachers out of town. One week after that, on August 13th, ELIFA received formal certification from the NLRB. Our unit is "All full-time and regular part-time non-tenure and non-tenure track teachers employed by the employer in the English Language Institute, excluding Director, Associate director, Teaching Assistants, Tenure or Tenure Track Faculty, Visiting Faculty, Academic Administrative Asistant, Office, Clerical Employees, Guards, and Supervisors."

Our official certification from the NLRB brought us to the next step, the collective bargaining process itself. On the 17th of August, I wrote a letter to the Provost asking once again to meet for purposes of collective bargaining. He responded on the 23rd that he was ready to meet with the Union, which he did on August 30th. At that meeting, the Provost introduced the Chief Negotiator for the University, the Dean for Faculty Affairs.

The Union had already established two committees, a three-member Contract Committee and a three-member Negotiating Committee, and these six people worked hand-in-hand to develop the contract. Five contracts from faculties in higher education were used as models. These contracts, which had been renegotiated many times, were excellent contracts. We also used a book called Contract Clauses, which comes from the Center for the Study of Collective Bargaining in Higher Education and the Professions at the City University of New York, Baruch College. We put together our contract working with these contracts and this book. We had the help of the labor lawyer and advice from the AFT, but basically the union members negotiated and wrote the contract.

The first bargaining session was on September 7th. At that first session, the Union presented its "laundry list" of issues which we were interested in negotiating in the contract. There are three kinds of issues in collective bargaining: mandatory issues, voluntary issues, and illegal issues. Mandatory

issues for bargaining are wages, hours, and working conditions. Our issues ranged from academic freedom to wages, but wages were not our first priority even thoughour salaries were extremely low. Other procedural matters discussed at that first meeting were agreement to meet twice a week and not to bring our attorneys without prior notice. In fact, neither side brought attorneys at all, which is one reason we succeeded in finishing as quickly as we did. The final bargaining session was February 25th. Six months is fast for an initial contract.

The Union had three negotiators: The President, Vice-President, and another member of the Union. The University had two negotiators: The Dean of Faculty Affairs and originally, the Vice President for Business and Fiscal Affairs, who was later replaced by the Director of Personnel.

The six months of negotiations were basically amicable. The Union used a technique called collaborative bargaining, which emphasizes interests rather than issues. Negotiators tend to get nowhere when they look at a situation from one hard and fast point of view. If you try to look at and satisfy the interests of both sides, you can come up with a realistic and mutually satisfactory collective bargaining agreement, which is what we have.

Throughout the negotiations, the Union did not strike or resort to any special tactics. Finally, on the 25th of February, the chief negotiators for both sides initialed every article in the contract to signify that the negotiating teams had reached agreement. The next step was to give the contract to the Union for ratification, which we did the next day, February 26th. At this meeting, we went through the entire contract with the Union members. At the end of the meeting, the members voted unanimously to ratify the contract. We had also invited the three members of the unit who were not members of the union to attend the ratification meeting. These three people voted not to ratify the contract. It was the Union's decision to open the ratification to all members of the unit because our unit included people who had not joined the Union. However, under the NLRA, you could ask only the Union members to ratify the contract.

The union members voted unanimously to ratify the contract not because it was a perfect contract but because we were relieved to have a clear set of regulations that defined our working conditions. Furthermore, throughout the negotiations, we had kept the union members apprised of both the progress and the content of the negotiations. We had gone through the proposed contract with the members one month before the ratification meeting. The union members were familiar with it. When we had the ratifiaction meeting, we went through it a second time. It is of the utmost importance to keep each and every member of the union informed

every step of the way of what you are doing in your negotiations if you want to have a successful ratification vote.

The next step was to inform the University that we had ratified this contract. The University was having a meeting of the Board of Trustees that very week on March 3rd. At that meeting, the University attorney suggested that the Board of Trustees ratify the contract. He said that the Provost recommended it and was pleased with it. He felt that the contract was a good one, and he also recommended that the Board send the contract to the Executive Committee of the Board of Trustees, which would give final approval. On April 15th, the Executive Committee of the Board of Trustees did approve this contract, so it went into effect on April 15th. The Provost signed it for the University, I (as President) signed it for the Union, and then to show that we were entering a new era of friendly relations, the Provost invited all members of both negotiating teams as well as the University attorney out to dinner.

There are twenty articles in the AU-ELIFA Agreement. The Table of Contents includes the following articles. Union Recognition is the statement of the University's recognition of the Union as the bargaining agent for the teachers. University-Union Relations has to do with non-discrimination. Union Activities are such rights as having a union bulletin board and putting union literature in the ELI mailboxes, which you may take for granted, but are best to spell out in the contract. Academic Freedom, an important article, uses traditional wording. Dues Checkoff states that the University will deduct from the paycheck of the teacher in the bargaining unit the amount of union dues--if that teacher signs a payroll authorization , which is voluntary. That authorization remains in effect for a year before it can be revoked. This article is necessary because the Union treasurer shouldn't have to run around collecting dues every month, and it is one of the most conventional of contract articles.

There are six kinds of Union Security clauses. Our agreement contains an "Agency shop" clause, which requires the employees who are not members of the union to pay a service fee which is the equivalent of the union dues. The Union, under the NLRA, is obligated to represent all the employees in the unit, not just the employees in the Union. Therefore, since all employees in the unit will benefit from the gains of the Union, it is only fair that all of them pay either a service fee or union dues.

Special Program Status places special programs under the provisions of the contract. Full-time and Part-time Teachers sets up a certain procedure to increase and decrease the number of full-time and part-time positions each semester, depending upon the number of contact teaching hours, which is tied to enrollment. Wages and Promotions places the teachers on a Wage Table.

In the area of fringe benefits, we did not succeed in getting many benefits that were better than what we had before except in regard to sick leave. We established a system of paid sick leave for all the teachers, which is a basic employment right that we never had before. Although we wished to extend the other fringe benefits to the part-time teachers, we failed. This was one of our highest priorities and one of our greatest disappointments. At the time we were negotiating, we had about nineteen part-time teachers. American University has 1,000 part-time employees. The Provost did not want to extend benefits to our nineteen teachers because he knew that would open the door to extending the benefits to the 1,000 other part-time employees of the University. We do have paternal leave, maternal leave, and survivor benefits.

Conditions of Employment covers a wide spectrum of issues. It includes class size (the University refused to specify a maximum number of students) and teaching load. The ELI teachers teach between 14 - 17.5 hours a week. We were hoping to reduce that, but the University would not agree.

The Grievance Procedure with Binding Arbitration is the heart of the collective bargaining agreement. We are pleased with our grievance procedure, which was a combination of proposals from the Union and the University. Most of the language in the article is the Union's, but the actual steps involved were suggested by the University. Step one is the Director of ELI, step two is the Dean of the College of Arts and Science, step three is the Grievance Adjustment Board (five people throughout the University), step four in the Provost, and step five is Binding Arbitration. Binding Arbitration means that the grievant, if not satisfied with the decision at step four, can go to an outside arbitrator, and this arbitrator will make a decision which is binding on bothparties. Therefore, the Union could not strike over the decision and the University would have to implement it.

Discipline and Discharge is a detailed traditional article. Reduction in Teaching Load for the Shop Steward gives him/her release time from one-third of a full-time teaching load. Scope of the Agreement states that the Agreement covers all our working conditions and will remain in effect for two years. Separability states that if one part of the contract becomes invalid, the rest remains in effect. Staff reduction is based on seniority of first the part-time and then the full-time teachers. The final article is a detailed Seniority Rights process. The appendix contains the certification from the NLRB, the payroll dues deduction authorization, the wage table, the grievance fact sheet, and the master seniority list.

Our major non-financial contract gains include the grievance procedure with binding arbitration for all teachers, paid sick leave for all teachers (as well as paid substitutes), the Union Security clause, the Dues Checkoff, the Staff Reduction Procedure, and the Seniority Rights clause.

There were three major financial gains from the contract. First, all full-time teachers received an average across-the-board 13% wage increase. It was an average because every teacher had a different salary when he/she was placed on the wage table. This increase came at a time when no other teacher in the University received any increase at all. Furthermore, all the increases were retroactive to January 1, 1983. The contract was signed on April 15th; ELI teachers received their retroactive pay on April 22nd and 29th. Before the contract was signed, the average full-time teacher made $14,223. After the contract went into effect, the average teacher made $16,267, which was a $2,000 increase. Nevertheless, a nine-month salary of $16,000 means that we are still underpaid. Collective bargaining doesn't work miracles.

Secondly, we received proprotionate pay in the summer rather than being paid on an hourly basis as we were formerly. For example, a teacher who made $16,000 in nine months would make another $8,000 in the summer semester if he/she worked full time. However, the teachers voted to put into the contract the statement that teachers in the summer would be given 2/3rds of a full-time teaching load, not a full-time teaching load, on the principle that if the pie is divided into smaller pieces, it will go further. In the summer, the ELI enrollment drops, and we wanted to make sure that as many teachers as possible could teach. With the proportionate pay, even teaching 2/3rds time gives us an increase.

Third, there was a 40% to 65% increase in the hourly rate. Formerly it was either $17.00 or $20.00. After the contract was signed, it was $28.00 an hour. The part-time teachers were also paid retroactively.

The University gave a 4% wage increase in January, and according to our Collective Bargaining Agreemnt, we agreed to accept the General University wage increase in the second year of the Collective Bargaining Agreement. We did this because the Union felt that in light of the financial difficulties which American University had been undergoing, it was the right action to take. The ELI teachers received the wage increase across the board; the other teachers in the University received the increase on the basis of merit.

The hourly rate was also increased by 4%. It is now $29.12, and we get a 14% differential for preparation time, which brings it to $33.20. Looking at our current salaries for nine months, there are five teachers at Grade 4 Step 1 ($18,210); six teachers at Grade 3 Step 1 ($16,640); four teachers at Grade 2 Step 2 ($16,068); and four teachers at Grade 2 Step 1 ($15,600). The median salary is $16,905; our average salary is $16,714.

The Chronicle of Higher Education recently published figures comparing salaries at universities throughout the United States, and also comparing the salaries of males and females at each faculty rank. At American University, at the lowest rank, the female instructor is earning $20,200, while the male instructor is earning $21,300. Even with the increase, the ELI teachers are still 20% below what the lowest faculty rank is being paid at American University.[1] Once more let me stress that the best part of this agreement is not the wage table. The best part is that we have a clear set of working conditions.

Now I will discuss the aftermath. Anytime there is a major change, there is a period of adjustment, and we had such a period. The Provost did take us out to dinner on Friday, April 15th. When we came to work on Monday, in our mailboxes we found a packet of "Work Rules". This was surprising because Work Rules are usually part of the collective bargaining agreement. We had to make a few phone calls to the University negotiators and attorney, and eventually those work rules were rescinded. However, they began appearing in other forms, so in May the Union had to go back to the NLRB to file Unfair Labor Practice Charges against the University. The NLRB investigated and found merit in nearly all the Unfair Labor Practice Charges, so the NLRB informed the University. The University wished to settle, which is the right of the employer if merit has been found in the charges. Settling meant that the University rescinded all the unilateral changes in our working conditions, which is what the Unfair Labor Practice Charges were all about. Once you have a collective bargaining relationship, the employer can not make unilateral changes in your conditions of employment.

Weekly meeting were established to discuss the issues involved in the Unfair Labor Practice Charges. The meetings have been positive, amicable, and have opened the lines of communication. The meetings are attended by the University Contract Administrator, The ELI Director, and three members of ELIFA. Generally, we seem to be entering a period of stability in terms of labor relations. The contract expires on December 31, 1984. The University and the Union will begin negotiations again in September, and ELIFA is counting on more improvement the second time around.

1. The Chronicle of Higher Education, January 18, 1984.

To conclude, I believe that collective bargaining is an effective means to improve and clarify the conditions of employment for ESL/EFL teachers because it allows the employer and employee to meet as equals at the bargaining table and to negotiate a mutually satisfactory agreement. Negotiation is a way of controlling your own destiny.

Myra Shulman
Language Specialist
The English Language Institute
The American University
Washington, D.C. 20016

BIBLIOGRAPHY

I LABOR LAW

Anderson, Howard J., Primer of Labor Relations, Bureau of National Affairs, Inc., Washington, D.C. , 1980.

A Guide to Basic Law and Procedures under the National Labor Relations Act, U.S. Government Printing Office, Washington, D.C. , 1978.

1982 Guidebook to Labor Relations, 21st ed., Commerce Clearing House, Inc. , 1982.

Leslie, Douglas L., Labor Law in a Nutshell, West Publishing Company, St. Paul, Minnesota, 1979.

Mc Guiness, Kenneth C. , How to Take a Case Before the National Labor Realtions Board, 4th ed., Bureau of National Affairs, Inc. , Washington, D.C. 1976.

Shafritz, Jay M. , Dictionary of Personnel Management and Labor Relations, Moore Publishing Company, Inc. , Oak Park, Illinois, 1980.

II COLLECTIVE BARGAINING

Beal, Wickersham, and Kienast, The Practice of Collective Bargaining, 5th ed., Richard D. Irwin, Inc., Homewood, Illinois, 1976.

Chandler, Margaret K. and Daniel J. Julius, Faculty vs. Administration: Rights Issues in Academic Collective Bargaining, National Center for the Study of Collective Bargaining in Higher Education, Baruch College (CUNY), 1979.

Douglas, Joel M. and Molly Garfin, Contract Development in Higher Education Faculty Collective Bargaining: A Guide to Provisions, Clauses, and Counterproposals, National Center for the Study of Collective Bargaining in Higher Education, Baruch College (CUNY), 1980.

Fisher, Roger and William Ury, Getting to Yes: Negotiating Agreement Without Giving In, Penguin Books, New York, 1983.

Nash, Peter G. and George P. Blake (eds.), Appropriate Units for Collective Bargaining, Practising Law Institute, New York City, 1979.

Nierenberg, Gerard I., The Art of Negotiating, Simon and Schuster, New York, 1981.

Richardson, Reed C. , Collective Bargaining by Objectives: A Positive Approach, Prentice-Hall, Englewood Cliffs, New Jersey, 1977.